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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,110	02/04/2004	Steven T. Jersey	85455-9103-01	3955

23409 7590 08/29/2006

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT PAPER NUMBER

3634

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

This Office action is in response to applicant's election and amendment filed August 7, 2006 by which claims 1-44 were canceled and claims 45-61 were added.

Election/Restriction

Applicant's election of species (b), i.e., Figures 3 and 4 in the reply filed on August 7, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Applicant has stated that all pending claims, i.e., 45-61, read on the elected species.

In view of applicant's amendment, i.e., canceling claims 1-44 and adding claims 45-61, the following restriction is hereby being set forth.

In the interest of time, it is noted that since applicant has already elected species (b), the election requirement is not being set forth below, i.e., the election of species requirement set forth in the restriction requirement mailed March 2, 2006 still stands.

It is further noted that only invention III, i.e., claims 55-61, will be examined by the current examiner. Election of inventions I or II will most likely cause the case to be transferred to the appropriate class and art unit.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 45-51, drawn to a bracket, classified in class 248, subclass 200.
- II. Claims 52-54, drawn to a method, classified in class 248, subclass 637.

II. Claims 55-61, drawn to a rack, classified in class 211, subclass 189.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the product as claimed can be used in a materially different process of using that product such as engaging, sliding, and then pivoting the elements, i.e., a different combination and/or sequence of steps.

Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as use without supports and a stretcher. See MPEP § 806.05(d).

Inventions III and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the product as claimed can be used in a materially different process of using that product such as engaging, sliding, and then pivoting the elements, i.e., a different combination and/or sequence of steps.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

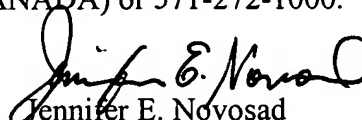
Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jennifer E. Novosad
Primary Examiner
Art Unit 3634

August 25, 2006